

financial interest and syndication rules. The Commission also proposes to correct the cross-reference in the local public inspection file rules to the rule section governing a licensee's political file, and to delete the note set forth in Section 73.3526(a)(1). These revisions are long overdue and Capstar urges the Commission to adopt them.

(2) Other Proposed Revisions

There are several additional revisions to the public file rule that Capstar believes would relieve licensees from unnecessary regulatory and administrative burdens without compromising the public's access to important information.

(a) Section 73.3613 Documents.

Section 73.3613(b) of the Commission's Rules require licensees to file with the Commission contracts, instruments or documents relating to the present or future ownership or control of the licensee, or the licensee's stock, rights or interests therein. Such agreements include articles of partnership, association, and incorporation; bylaws; agreements for transfers of stock, instruments for issuance of new stock, agreements for the acquisition of stock, mortgage and loan documents, and agreements reflecting a change in the officers, directors or stockholders of a corporation.²⁶ Further, the Commission requires that

²⁶ 47 C.F.R. § 73.3613(b) (1997).

these documents also be placed in the station's local public inspection file.²⁷

As the Commission is well aware, enactment of the Telecommunications Act of 1996 and the corresponding relaxation of the Commission's local radio ownership rules²⁸ has resulted in the unprecedented proliferation of broadcast station mergers and acquisitions. Both the totality and complexity of these acquisitions has led to the production of enormous amounts of transaction and financing documents, contracts and agreements — voluminous amounts of paper which eventually must find its way from a licensee's corporate attorneys' offices to the stations' local public inspection files.

It is widely recognized by broadcast licensees that the small number of people who elect to inspect a station's local public inspection file generally seek to review the station's Ownership Reports, Employment Reports, or pending assignment or transfer of control applications. Specific and highly complex transaction documents attendant to an assignment or transfer of control of a station, however, are not generally requested by the public.

Capstar proposes that the Commission eliminate the requirement in Section 73.3526 that documents, agreements and contracts filed

²⁷ 47 C.F.R. § 73.3526(a)(3) (1997).

²⁸ 47 C.F.R. §§ 73.3555(a)(1); *Order*, 61 Fed. Reg. 10689 (March 15, 1996).

pursuant to Section 73.3613(b) be copied and placed in the local public inspection file. Members of the public generally do not request to examine these documents. Moreover, such documents are on file with the Commission and are cross-referenced in post-consummation Ownership Reports which are placed in the local public inspection file, thus notifying members of the public of their existence. Capstar proposes instead that the Commission allow licensees to provide Section 73.3613(b) documents within seven days, upon a request made in person by a member of the public. A response time of more than seven days would be permitted if the documents were shipped to the station within that time period but had not yet arrived at the station. This proposed revision to the local public inspection rules is similar to the provision of Section 73.3526(f) which gives a licensee time to make copies for a member of the public upon request.

(b) Proposed Clarification of Section 73.3526(a)(7).

The Commission proposes to clarify the requirement that “all written comments and suggestions received from the public by licensees . . . regarding operation of their station shall be maintained in the local public inspection file,” by including all electronic mail messages (“e-mail”) transmitted via the Internet to stations capable of receiving them.

Capstar believes that the Commission should clarify the subject matter of letters from the public which should be retained, but the proposal to include copies of all e-mail is ill-advised. Broadcast station websites often include e-mail addresses for various employees, including those involved with programming, sales, promotions, etc. Often, station on-air employees receive e-mail on their personal e-mail accounts. The proposal also fails to recognize that not all computers connected to the Internet are connected to printers or LANs. For e-mail received via these computers, it could require the additional burden of making copies on floppy disks and then printing copies for the public file. The requirement to screen all of these e-mail messages to determine which ones must be placed in the public file would impose an insurmountable regulatory and administrative burden upon stations and licensees — an ironic result given the thrust of this rulemaking proceeding.

The Commission should limit the broad reach of Section 73.3526(a)(7), however. For example, the rule's language is so vague that an industry practice has developed such that only letters relating to a station's "programming" operations are included in the local public inspection file, as opposed to letters regarding, for example, billing disputes, which are left out of the local public inspection file. This expansive language, therefore, has invited abuse, confusion, and regulatory uncertainty for stations and licensees.

(3) Other Clarifications Are Needed.

Capstar also seeks Commission clarification of the following requirements under the Commission's local public inspection file rules:

- The Note to Section 73.3526(a)(2) appears to require that service contour maps, submitted with applications placed in the station's local public inspection file pursuant to Sections 73.3526, must also be kept in the file. However, Commission inspectors interpret these rules inconsistently. Some inspectors have concluded that service contour maps must be placed in the local public inspection file, while other Commission inspectors have stated otherwise. Capstar seeks clarification of this rule.²⁹

- Some Commission inspectors have advised licensees that copies of FCC Form 302, license applications, must be retained in the local public inspection file, while other inspectors have stated otherwise. Capstar seeks clarification of this requirement.

- Capstar proposes that the reference in Section 73.3526 to applications that involve changes in program service be eliminated since there is no requirement that a licensee seek authorization to make changes in program service.

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Capstar also questions the necessity of including service contour maps in a station's local public inspection file, given that a license's major parameters are already listed on the license which is posted at the station.

- Section 73.3526(a)(12) of the Commission's Rules requires that *every* agreement or contract involving time brokerage of the licensee's station or of another station by the licensee be included in the local public inspection file.³⁰ This rule, however, was only intended to include "attributable" time brokerage agreements — those agreements whereby more than 15 percent of a radio station's broadcast hours per week are brokered to another station — and not time brokerage agreements for less than 15 percent of a station's weekly broadcast hours.³¹ Capstar seeks clarification of this rule.

V. Local Public Inspection File - Retention Periods

While the current retention periods for public file documents are not unduly burdensome, some retention periods should be revised in order to reduce the administrative burden placed upon licensees and to better serve the public interest.

The current retention scheme requires licensees to retain for the license term or until grant of the first renewal application, assignment applications, transfer applications and applications for major facility modifications. The Commission is correct in questioning the need for this requirement and it properly notes that other public file material provides the information contained in a licensee's applications. For

³⁰ 47 C.F.R. § 73.3526(a)(12) (1997) (emphasis added).

³¹ See *Local Marketing Agreements*, 7 FCC Rcd 2755 (1992).

example, information about a licensee's ownership structure is contained not only in its assignment or transfer application, but also in its most recent ownership report. A member of the public seeking ownership information will be confronted with multiple documents, many of which are redundant and more often, outdated. In order to minimize confusion, applications that are no longer pending before the Commission and the courts should not be retained in the public file.

A person seeking information about a station's operating requirements must pour over various facilities applications in order to obtain pertinent data. However, once the facilities application is granted, the construction permit or license contains the pertinent data about the station's operating requirements. Retention of these applications in the public file is not only redundant but also confusing to the public.

In many organizations, restructuring may occur several times in one year, which means that several ownership reports are retained in the file – most of which are outdated. Capstar suggests that the current retention period for ownership reports be revised to allow licensees to retain only their most current ownership report. Capstar also submits that retaining ownership reports of prior licensees does not serve an identifiable public need.

The Commission requests comment regarding the length of time that a new owner should be required to retain a rule waiver application

or the waiver exhibit in its public file. If the application is granted, then a copy of the grant and the waiver exhibit (and not the entire application) should be retained in the file for the duration of the waiver. If the waiver is denied, there is no reason to retain the application. As a general rule, a new owner should not be required to maintain information in the public file relating to the operation of the station under the prior owner. For example, quarterly issues/program statements relate to the performance of the prior owner which would not be subject to review when the new owner files for license renewal. The same is true for annual EEO reports, letters from the public regarding station operations, and ownership reports. The Commission should eliminate the requirement that a new owner is responsible for retaining these items³², or at the very least, if required to maintain prior licensee documents, the current licensee should not be held accountable for deficiencies in the public file caused by the prior licensee.³³

³² As a practical matter, new owners often have little or no control over the content of the public file which they inherit upon taking over a station. Even though purchase contracts often require a seller to represent that the public file is complete, the buyer's recourse is relatively limited. For example, if the seller did not regularly prepare quarterly issues/program statements and place them in the public file or if they were prepared but lost, it would be difficult, if not impossible, to create such documents months or years later.


³³ This could be accomplished by permitting the current licensee to inventory the public file upon assuming control and inserting a list of documents that were missing on that date.

VI. Conclusion

Capstar believes the Commission's proposal to amend the main studio and public file rule are commendable actions. Rather than simply relaxing the main studio rule, however, Capstar believes the public interest would be better served by its complete elimination. Capstar supports most of the Commission's proposals to streamline the public file rule. These proposals will reduce burdens on broadcasters, will encourage efficient operation and are consistent with the public interest.

Respectfully submitted,

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August 7, 1997